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OFFICE OF PETITIONS

In re Application of :
Howard et al. :
Application No. 09/456,647 :
Filed: December 8, 1999 :
Attorney Docket No. 35-95-010.1 :
:

ON PETITION

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed February 14, 2006.

The petition to withdraw the holding of abandonment is **Dismissed**.

Any request for reconsideration should be filed within **TWO MONTHS** of the mailing date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

This application became abandoned for failure to timely submit the issue fee, as required by the Notice of Allowance and Fee (s) Due, and submit corrected drawings, as required by the Notice of Allowability both of which were mailed January 10, 2005. The Notice of Allowance and Issue Fee Due and the Notice of Allowability set a three (3) month period for reply. The Notice was returned on January 26, 2005. A second Notice of Allowance and Fee (s) Due, and submit corrected drawings, as required by the Notice of Allowability both of which were mailed on August 17, 2005. Extensions of time were not available under the provisions of 37 CFR §1.136(a). The second Notice of Allowance was returned on August 29, 2005. Accordingly, this application became abandoned on November 18, 2005. This decision precedes the mailing of a Notice of Abandonment.

Petitioner asserts that the Notice of Allowability mailed April 2, 2004 was never received. A review of the record shows the Notice of Allowance and Fee(s) Due was mailed to the correspondence address of record on two occasions. The second time the Notice was returned for "a better address". The record clearly demonstrates that petitioner did not receive the Notice. However, the record is not clear that the Notice was not received due to an untimely change of correspondence address. It is noted that a change of correspondence address was submitted on November 4, 2005. The only

change to the correspondence address was from "suite 600" to "6th Floor". The post office returned the correspondence for a "better address". Petitioner should provide additional evidence to establish that the change in correspondence address had no effect on the failure to receive the Notice.

Where an application becomes abandoned as a consequence of a change of correspondence address (the Office action being mailed to the old, uncorrected address and failing to reach the applicant in sufficient time to permit a timely reply) an adequate showing of "unavoidable" delay will require a showing that due care was taken to adhere to the requirement for prompt notification in each concerned application of the change of address (see MPEP § 601.03), and must include an adequate showing that a timely notification of the change of address was filed in the application concerned, and in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address. The lack of notification, or belated notification, to the U.S. Patent and Trademark Office of the change in correspondence address does not constitute unavoidable delay. See MPEP 711.03(c). Nor would the failure to promptly change the correspondence allow for withdrawing the holding of abandonment.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300

By delivery service:
(FedEx, UPS, DHL, etc.) U.S. Patent and Trademark Office
Customer Service Window,
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.



Charlema R. Grant
Petitions Attorney
Office of Petitions